difficult, and makes larger demands upon the ready learning and mental resources of the profession, than that which has come into vogue in the American courts, where the counsel sometimes prepares a brief of fifty or more closely printed pages, and feels bound to read, if not to discuss, the whole extent of it before the court. Under such circumstances he feels himself almost unfairly treated if the court interrupt him by impertinent questions, and he naturally supposes that they are becoming impatient. The court have no alternative but to sit quietly, and endeavor to keep up the appearance of listening.

The arguments before the Law Lords, on appeals to the House of Lords, are more formal, and less conversational, than in most of the other English courts. But there is one practice at the English bar which tends very much to increase the interest of law arguments—the same counsel very seldom reargue a cause, either in the same or an appellate court. I. F. R.

RECENT AMERICAN DECISIONS.

Supreme Court of Maine.

ELLEN WILSON *v.* GRAND TRUNK RAILWAY COMPANY.

The holder of a railway passenger ticket is only entitled to passage with such personal baggage as he carries with him at the time. Baggage sent by an after train will be at his risk, and not that of the company.

APPLETON, C. J.—The plaintiff was a passenger on board the defendants' cars, having seasonably paid her fare. Her baggage was not with her, it having been left behind without any fault of the defendants. Some two or three days afterwards it was left in the charge of their servants to be transported to the Empire station, on their line, but it never reached its place of destination. This suit is brought to recover the value of the baggage lost.

The presiding judge instructed the jury, "that, if they should find that the plaintiff went on board the defendants' road as a passenger on Tuesday preceding without baggage, and that the trunk and its contents were ordinary personal baggage, such as a passenger would be entitled to take without extra charge, it was not necessary there should be proof that anything was paid for

carrying the trunk between the same points; that the price paid by the plaintiff for her own passage, and the evidence in the case, if found to be true, were sufficient consideration for the promise alleged in the writ."

As the plaintiff's trunk was taken for transportation some days after she had passed over the defendants' road, the substance of the charge of the presiding judge was, that the price paid by the plaintiff for her ticket included the compensation due to the defendants for their subsequent transportation of her trunk—the trunk and its contents being personal baggage. In other words, it was not necessary that the baggage of the passenger should go with the passenger, but that it might be forwarded subsequently and without any additional charge for its freight.

The fare for the passenger includes compensation for the carriage of his baggage, as to which the carriers of passengers are to be regarded as common carriers. There need be no distinct contract for the carriage of the baggage. The fare of the passenger covers the compensation for the freight of the baggage. The baggage must be ordinary baggage, such as a traveller takes with him for his personal comfort, convenience, or pleasure for the journey. It must be the "ordinary baggage" of a traveller, regard being had to the journey proposed.

It is implied in the contract that the baggage and the passenger go together. "The general habits and wants of mankind," observes ERLE, C. J., in *Phelps* v. *L. and N. W. Railway Co.*, 115 E. C. L. 327, "must be taken to be in the mind of a carrier when he receives a passenger for conveyance; and the law makes him responsible for all such things as may be fairly *carried by the passenger* for his personal use." In *Cahill* v. *L. and N. W. Railway Co.*, 100 E. C. L. 172, WILLES, J., says: "Where a passenger takes a ticket at the ordinary charge, he must, according to common sense and common experience, be taken to contract with the railway company for the carriage of himself and his personal luggage only; and that he no more extends the contract to the conveyance of a single package of merchandise than of his entire worldly possessions." In *Smith* v. *Railroad Co.*, 44 N. H. 330, BELLOWS, J., uses the following language: "Until a comparatively recent period, the English courts were inclined to hold that carriers of passengers by stage-coaches and otherwise, were not liable for injuries to their baggage, unless a distinct price was paid

for its transportation. But it is now well settled that the price paid for the passenger includes also the personal baggage required for his personal accommodation; the custody of the baggage being regarded as accessory to the principal contract. * * In general terms it may include not only personal apparel, but other conveniences for the journey, such as a passenger *usually has with him* for his personal accommodation." "The baggage," observes MULLIN, J., in *Merrill* v. *Grinnell*, 30 N. Y. 619, "must be such as is necessary for the particular journey that the passenger is, at the time of the employment of the carrier, actually making."

It follows from the nature and object of the contract that the right of the passenger is limited to the baggage required for his pleasure, convenience, and necessity during the journey. As it is for his use and convenience, it must necessarily be with him as it is for him. He may reasonably be expected to exercise some supervision over it during and be ready to receive it at the expiration of his journey. In the present case the baggage of the plaintiff was forwarded two days after she had passed over the road. If its transmission may be delayed two days and the carrier is required to take it without any compensation save the fare paid by the passenger who had preceded it, it may equally be delayed weeks or months, and the carrier be required to forward it without any additional pay. It presents a different question when the delay is caused by the fault of the carrier or there is a special agreement with him or his agent for the subsequent transportation of the passenger's baggage.

The fare paid by the passenger over a railroad is the compensation for his carriage and for the transportation, at the same time, of such baggage as he may require for his personal convenience, pleasure, and necessity during his journey. Baggage subsequently forwarded by his direction, in the absence of any special agreement with the carrier or of negligence on his part, is liable, like any article of merchandise, to the payment of the usual freight.

Exceptions sustained.

The foregoing opinion unquestionably places the case upon the true ground—that in the absence of all contract or consent on part of a railway company, they are under no additional duty or obligation to a passenger by reason of his purchase of his ticket beyond that of safely carrying him to the point indicated on the ticket, together with such personal baggage as he may find it for his convenience to carry with him, not exceeding the limit fixed by the rules and regulations of the

company. There can be no possible question that, aside from special circumstances indicating the actual or implied consent of the company to allow the baggage of the passenger to go upon a different train from that on which the passenger himself goes, there is no obligation whatever to carry the baggage at all, except in the usual mode for special compensation. It is of the very essence of the implied stipulation on the part of the company to carry a reasonable amount of personal baggage with their passengers, that it shall go upon the same train with them. The care which the passenger himself exercises over the baggage is of the greatest importance to its security. In England, when the passenger changes from one main line to a branch line, in order to reach another main line, he is always expected to point out his baggage, and if he do not, is specially inquired of if he have any, and if so, requested to point it out, and if he fail to do it, is sure to fail of finding his luggage at the end of his route. Under such circumstances there would not be the slightest safety in trusting luggage to go by any mere passenger train without some one to look after it. Perhaps this uncertainty is somewhat peculiar to England, or the United Kingdom of Great Britain, since here the companies never give any check for luggage, as they call it, while upon the Continent the companies all give formal receipts or bills of lading for baggage, and checks are also given by our companies which have the same force.

This consideration of giving a check or bill for the baggage is of some importance in regard to the responsibility of the companies. As a general thing, railway companies never do this, except in connection with a ticket for passage. In all other cases, the baggage must go by express, or by the parcels office, as the expresses are called in Europe. We think most railway companies would scout the idea of sending baggage by passenger trains, separate from the passengers, as the height of absurdity, unless, perhaps, where the company had been in fault in not forwarding it at the proper time, or by having sent it in the wrong direction. But there is no doubt it would be entirely competent for the company to assume a special undertaking of this character. And where the servants of the company, being informed of the fact that the passenger did not intend going by the same train, in consequence of being delayed, or having gone before, or for any other reason, understandingly accept baggage, to go in the passenger train, without any accompanying passenger, we are not prepared to say that the payment of the price of transportation should make any difference in regard to the duty or responsibility of the company. It is hardly to be supposed that the company would undertake any such office as a mere gratuity, unless for some of its officers, agents, or employees. The very fact of undertaking the duty by the servants of the company, without any additional compensation, would seem to indicate very clearly that they understood the service was compensated by the fare paid by the passenger. How far the servants and employees of a railway company could fairly be regarded as acting within the scope of their employment in making such an extraordinary contract, seems to us very questionable. Unless the company had been in fault in regard to the transportation, so that it had become their duty to see it carried, and their servants were therefore strictly in the line of their duty in forwarding it, in which case they would unquestionably have the power to bind the company in selecting the mode of conveyance; unless this or some exceptional case were presented, it seems to us, as we said, very questionable how far the servants of a railway company could be said to act within the scope of

their authority in forwarding baggage by passenger train without the owner going at the same time. It is certainly well understood by all persons at all conversant with the subject (and all who deal with servants are bound to learn the general course of the business), that this is not the common course of forwarding baggage; and that being so, any one desiring to have his baggage forwarded in that mode must be assumed to understand that this is not within the ordinary scope of the servants' employment, and by consequence, that they have no authority to bind the company by any such undertaking.

But if the general superintendent of the railway should direct the servants of the company, in a particular instance, to forward baggage in this mode, and to give a check accordingly, it does not seem to us that this ought to be regarded as a gratuitous undertaking, and so not binding the company as common carriers. We should certainly regard them, in that precise case, as common carriers for hire, although no separate price was paid for the baggage, but only the ordinary fare for the passenger and his baggage. It seems to us more natural to treat the contract of the company as only extending to the waiver of their right to have the baggage go in the same train with the passenger, than to the waiver of all compensation for the transportation, that being at variance with the entire scope of their creation and action; the other being only a modification in a very slight but not altogether unimportant particular. I. F. R.

Supreme Court of Missouri.

GILES F. FILLEY, RESPONDENT, *v.* A. D. FASSETT ET AL., APPELLANTS.

The complainant having first appropriated and applied the name of "Charter Oak" to a certain pattern of stoves manufactured and sold by him, will be protected by injunction in the exclusive use of the name as a trade-mark.

Any contrivance, design, device, name, or symbol, which points out the true source and origin of the goods to which it is applied, or which designates the dealer's place of business, may be employed as a trade-mark, and the right to its exclusive use will be protected by the courts.

The appropriation of any prominent, essential, or vital feature of a trade-mark by another, is an infringement. If the trade-mark is simulated in such manner as probably to deceive customers, the piracy may be checked by injunction.

The statute of Missouri providing for the filing of a description of any trade-mark sought to be used, was not designed to abridge or weaken the right to any trade-mark which may be acquired in the usual way. It does not authorize the appropriation by one party of a trade-mark the title and ownership of which belongs to another.

APPEAL from St. Louis Circuit Court.

In 1851 the plaintiff employed N. S. Vedder, stove-pattern maker of Troy, N. Y., to design and construct for him a set or series of cooking-stove patterns. The patterns were made as